



Ifw

+

<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence during pendency of filed application)</i>		Application Number	10/751,194
		Filing Date	December 31, 2003
		First Named Inventor	Garrett R. Goldfield
		Group Art Unit Number	2122
		Examiner Name	Not yet known
Total Number of Pages in This Submission	25	Attorney Docket Number	16319-08173

ENCLOSURES (check all that apply)	
<input type="checkbox"/> Fee Transmittal Form (in duplicate) <input type="checkbox"/> Check Enclosed <input checked="" type="checkbox"/> Return Receipt Postcard <input type="checkbox"/> Response to Notice to File Missing Parts <input type="checkbox"/> Assignment & Recordation Cover Sheet <input type="checkbox"/> Declaration <input type="checkbox"/> Power of Attorney <input type="checkbox"/> Application Data Sheet <input type="checkbox"/> Information Disclosure Statement & PTO/SB/08A <input type="checkbox"/> Copies of IDS Cited References <input type="checkbox"/> Request for Corrected Filing Receipt <input type="checkbox"/> Request for Correction of Recorded Assignment <input type="checkbox"/> Amendment/Response: [ ] Page(s) <input type="checkbox"/> After Final <input type="checkbox"/> Status Request <input type="checkbox"/> Revocation and Substitute Power of Attorney	<input type="checkbox"/> Issue Fee Transmittal <input type="checkbox"/> Letter to Chief Draftsperson. <input type="checkbox"/> Formal Drawing(s): [ ] Sheet(s) of Figure(s) [ ] <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> After Allowance Communication to Group <input checked="" type="checkbox"/> Request for Reconsideration of Petition <input checked="" type="checkbox"/> Copy of Decision Refusing Status under 1.47(a) <input checked="" type="checkbox"/> Declaration of Facts in Support of Filing on Behalf Of Omitted Inventor, David Murray <input checked="" type="checkbox"/> Copy of Declaration of Todd Haseyama <input type="checkbox"/>
REMARKS:	

SIGNATURE OF ATTORNEY OR AGENT			
Signature:			
Attorney/Reg. No.:	Amir H. Raubvogel, Reg. No.: 37,070	Dated:	October 22, 2004

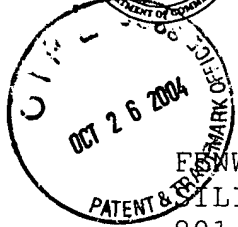
CERTIFICATE OF MAILING			
I hereby certify that this correspondence, including the enclosures identified above, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents Mail Stop Petitions, Attn: Christina Tartera Donnell, Petitions Attorney, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. If the Express Mail Mailing Number is filled in below, then this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service pursuant to 37 CFR 1.10.			
Signature:			
Typed or Printed Name:	Amir H. Raubvogel	Dated:	October 22, 2004
Express Mail Mailing Number (optional):			



UNITED STATES PATENT AND TRADEMARK OFFICE

817345

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov



FENWICK & WEST LLP  
SILICON VALLEY CENTER  
801 CALIFORNIA STREET  
MOUNTAIN VIEW CA 94041

**Fenwick & West**

OCT 08 2004

**Received**

**COPY MAILED**

OCT 05 2004

**OFFICE OF PETITIONS**

In re Application of	:	
Goldfield et al.	:	
Application No. 10/751,194	:	DECISION REFUSING STATUS
Filed: December 31, 2003	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. 16319-08173	:	

This is in response to the petition under 37 CFR 1.47(a), filed September 7, 2004. Applicants obtained a two-month extension of time to reply. Accordingly, the petition is filed timely.

The petition is dismissed.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 31, 2003, without an executed oath or declaration. Accordingly, on May 7, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring an executed oath or declaration and a surcharge for its late filing.

In response, on September 7, 2004, applicants filed the present petition, a declaration signed by two of the four joint inventors, a request for a two-month extension of time to reply, and paid the necessary fees.

In the Declaration of Facts, Mike Graves stated that on two separate occasions he sent both David Murray and Todd Haseyama UPS packages containing an Assignment, a Combined Declaration and Power of Attorney, and a cover letter requesting that they execute the documents. UPS Tracking Information indicated that the packages were delivered to the inventors.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack item (1) as set forth above.

As to item (1), it is unclear from the record whether inventors Murray and Haseyama were presented with a complete copy of the application papers. Unless the inventors were presented with a complete copy of the application papers, including the specification, claims and drawings, they could not attest that they have "reviewed and understand[] the application papers," and therefore, could not sign the declarations that they were given. Accordingly, applicants failed to show or provide proof that the nonsigning inventors have refused to sign the declaration. See MPEP 409.03(d). To show that the inventors have refused to join in the application, applicants must show that complete copies of the application papers, including the specification, claims and drawings, were presented to inventors Murray and Haseyama, personally or through their designated representatives, and that they did not respond to the requests that they sign the declarations.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Petitions Attorney:**

By mail:           Commissioner for Patents  
                    Mail Stop Petitions  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By FAX:           (703) 872-9306  
                    Attn: Office of Petitions

By hand: 2011 South Clark Place  
Customer Window  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, VA.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions